

submitted to the derivatives clearing organization by its clearing members, or by any other person in connection with the derivatives clearing organization's clearing and settlement activities.

(b) *Form and manner of maintaining information*—(1) *General*. The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31 of this chapter, for a period of not less than 5 years, except as provided in paragraph (b)(2) of this section.

(2) *Exception for swap data*. Each derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.

§ 39.21 Public information.

(a) *General*. Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. In furtherance of this objective, each derivatives clearing organization shall have clear and comprehensive rules and procedures.

(b) *Availability of information*. Each derivatives clearing organization shall make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(c) *Public disclosure*. Each derivatives clearing organization shall disclose publicly and to the Commission information concerning:

(1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(2) Each clearing and other fee that the derivatives clearing organization charges its clearing members;

(3) The margin-setting methodology;

(4) The size and composition of the financial resource package available in the event of a clearing member default;

(5) Daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or

settled by the derivatives clearing organization;

(6) The derivatives clearing organization's rules and procedures for defaults in accordance with § 39.16 of this part; and

(7) Any other matter that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

(d) *Publication of information*. The derivatives clearing organization shall make its rulebook, a list of all current clearing members, and the information listed in paragraph (c) of this section readily available to the general public, in a timely manner, by posting such information on the derivatives clearing organization's Web site, unless otherwise permitted by the Commission. The information required in paragraph (c)(5) of this section shall be made available to the public no later than the business day following the day to which the information pertains.

§ 39.22 Information sharing.

Each derivatives clearing organization shall enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and shall use relevant information obtained from each such agreement in carrying out the risk management program of the derivatives clearing organization.

§ 39.23 Antitrust considerations.

Unless necessary or appropriate to achieve the purposes of the Act, a derivatives clearing organization shall not adopt any rule or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden.

§§ 39.24–39.26 [Reserved]

§ 39.27 Legal risk considerations.

(a) *Legal authorization*. A derivatives clearing organization shall be duly organized, legally authorized to conduct business, and remain in good standing at all times in the relevant jurisdictions. If the derivatives clearing organization provides clearing services outside the United States, it shall be duly organized to conduct business and remain in good standing at all times in

the relevant jurisdictions, and be authorized by the appropriate foreign licensing authority.

(b) *Legal framework.* A derivatives clearing organization shall operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of the derivatives clearing organization. As applicable, the framework shall provide for:

(1) The derivatives clearing organization to act as a counterparty, including novation;

(2) Netting arrangements;

(3) The derivatives clearing organization's interest in collateral;

(4) The steps that a derivatives clearing organization would take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when a derivatives clearing organization's accounts are debited and credited); and

(6) Other significant aspects of the derivatives clearing organization's operations, risk management procedures, and related requirements.

(c) *Conflict of laws.* If a derivatives clearing organization provides clearing services outside the United States:

(1) The derivatives clearing organization shall identify and address any material conflict of law issues. The derivatives clearing organization's contractual agreements shall specify a choice of law.

(2) The derivatives clearing organization shall be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.

§§ 39.28—329.29 [Reserved]

Subpart C—Provisions Applicable to Systemically Important Derivatives Clearing Organizations and Derivatives Clearing Organizations That Elect To Be Subject to the Provisions of This Subpart

SOURCE: 78 FR 72514, Dec. 2, 2013, unless otherwise noted.

§ 39.30 Scope.

(a) The provisions of this subpart apply to each of the following: a subpart C derivatives clearing organization, a systemically important derivatives clearing organization, and any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3(d) of this chapter, seeking to become a subpart C derivatives clearing organization pursuant to § 39.31.

(b) A systemically important derivatives clearing organization is subject to the provisions of subparts A and B of this part in addition to the provisions of this subpart.

(c) A subpart C derivatives clearing organization is subject to the provisions of subparts A and B of this part in addition to the provisions of this subpart except for §§ 39.41 and 39.42.

§ 39.31 Election to become subject to the provisions of this subpart.

(a) *Election eligibility.* (1) A derivatives clearing organization that is registered with the Commission and that is not a systemically important derivatives clearing organization may elect to become a subpart C derivatives clearing organization subject to the provisions of this subpart, using the procedures set forth in paragraph (b) of this section.

(2) An applicant for registration as a derivatives clearing organization pursuant to § 39.3 may elect to become a subpart C derivatives clearing organization subject to the provisions of this subpart as part of its application for registration using the procedures set forth in paragraph (c) of this section.